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“THE TOTAL FORCE CONCEPT,” ASSERTING
JURISDICTION OVER AIR RESERVE COMPONENT FORCES

by

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Preface

Today's Air Force is a "total force." The regular Air Force relies heavily upon Air Force Reserve and Air National Guard of the United States to meet mission requirements.

Together these two forces make up the Air Reserve Components (ARC) of the Air Force.

As ARC forces are integrated into the force structure to meet mission requirements, a commander's authority to discipline members of the ARC force becomes an increasing concern. If disciplinary action is required against a member of the ARC force, commanders and judge advocates must understand the complexities of establishing jurisdiction under the Uniform Code of Military Justice (UCMJ).

The purpose of this paper is to provide commanders and judge advocates with a better understanding of how to manage the jurisdictional issues they will face and the extent of a commander's authority to discipline a member of the ARC force who commits any offense(s) under the UCMJ. Commanders and judge advocates need to understand this because disciplinary problems impact mission readiness! When disciplinary issues arise regarding ARC members, commanders must be able to react immediately to maintain good order and discipline. In order to do so, commanders and judge advocates must know the differences between the reserve components. This is extremely important because the criteria that make a member of the Air Force Reserve (AFRES) subject to the UCMJ is not the same as the criteria that subject a member of the Air National Guard to the UCMJ. Moreover, it is necessary to understand that the Air National Guard is made up of two distinct organizations and only one is a reserve component of the United States Air Force. Thus, if a commander doesn't understand the basis of his or her jurisdictional authority to punish ARC forces or mishandles the process, it has the potential to severely

impact unit morale and readiness. Not only will valuable time be wasted that a commander could have spent on other matters but an ARC member who deserves to be punished might go unpunished simply because commanders and judge advocates are not prepared to handle the situation. Therefore, it is critical for both commanders and judge advocates to read this paper and be prepared to handle any disciplinary actions against a member of the ARC forces.

In discussing these disciplinary issues, this paper specifically delineates a commander's authority to discipline ARC forces whether they are members of the Air Force Reserve (AFRES) when performing active duty or inactive duty training (This jurisdictional guideline applies to both Category A and Category B reservists.) or members of the Air National Guard when they are performing federal service in what is normally called "Title 10 status."

Initially, the paper will review and discuss the foundational requirements necessary for commanders to establish jurisdictional control over a member of the ARC forces for purposes of pursuing either court-martial or nonjudicial punishment (NJP) action under the UCMJ. I reference case law in the Appendix to emphasize its importance when attempting to establish jurisdiction. At times, jurisdiction is not clear. Judge advocates need to conduct research to support commanders and help resolve these issues. This paper separately discusses the two reserve components and the different jurisdictional issues commanders and judge advocates will encounter, depending on the reserve component to which the member belongs. Included in this section is a discussion laying out which commanders **may** have the authority to take disciplinary action in a deployed environment. Today, more than ever, the Air Force is deployed in a joint environment.

Deployed commanders need to discern the importance of their inherent authority as commanders to take disciplinary action. Also, commanders need to know how operational control (OPCON), administrative control (ADCON), and specified ADCON impacts which commanders may have authority to take disciplinary action.

In conclusion, I want to thank a number of individuals who assisted in the preparation of this article. First, to Mr. Darrell Phillips, Chief, International and Operations Law Division, Air Force Judge Advocate General School, for providing the idea, sponsoring the paper, and providing critical feedback on the first draft of this article. Also, to Colonel Andrew Turley, Staff Judge Advocate, HQ MAANG/JA, who provided invaluable insight and materials concerning the Air National Guard. Finally, I want to extend a special thank you to Colonel Patricia Battles who acted as my faculty research advisor. Without her superb analysis and helpfulness throughout my research, this article would not have been possible.

Abstract

Today's Air Force relies heavily upon the Air Reserve Component (ARC) forces to meet mission requirements. As ARC forces are integrated into the force structure, commanders and judge advocates must have a clear understanding of a commander's authority to discipline members of the ARC force.

The two reserve components that make up the Air Reserve Components are the Air Force Reserve (AFRES) and the Air National Guard of the United States (ANGUS). The Air National Guard consists of "two overlapping yet legally distinct organizations". The Air National Guard while in the service of the United States (ANG) is the state organization, and the Air National Guard of the United States is the federal or reserve organization. Commanders must have the proper jurisdictional authority over an AFRES or ANGUS member to pursue trial by court-martial or nonjudicial punishment.

To take any disciplinary action under the Uniform Code of Military Justice (UCMJ), the AFRES member must be on active duty or performing inactive duty training (IDT), and the ANGUS member must be in federal service (Title 10 status). To obtain proper jurisdiction to pursue a trial by court-martial, the commander must have evidence showing the ARC member committed the offense(s) while a person subject to the UCMJ. The holdings in *Solorio* and *Cline* clearly point out that the "status" of the ARC member is critical to establishing subject matter and personal jurisdiction. If the commander cannot meet the two criteria, there is no authority to take judicial action.

Regarding nonjudicial punishment (NJP), AFI 51-202 states that commanders may impose NJP on members of their command. The AFI's language, "members of their command" includes "members assigned, attached, or on TDY to that command." The instruction also states that "a member does not have to be attached on TDY orders for the commander to exercise Article 15 authority if the commander exercises the usual responsibilities of command over the member." In such a case, the commander has concurrent authority with the commander of the member's element or organization of permanent assignment." Thus, commanders will have concurrent jurisdiction along with the member's reserve component to take NJP action against an ARC member assigned or attached to their commands.

In a deployed environment, a commander's authority to take disciplinary action always flows from federal law and the Manual for Courts-Martial, 2000 Edition, not from doctrine. References to administrative control (ADCON) and specified ADCON in doctrine do not grant disciplinary authority, they simply identify commanders who may have the authority to discipline ARC members. In all cases short of full mobilization, both reserve components retain ADCON, and the Air Force component (usually COMAFFOR) is given specified ADCON. Thus, the parent reserve component and the COMAFFOR have concurrent jurisdiction to take disciplinary action against an ARC member. However, during full mobilization, the gaining MAJCOM acquires ADCON over all ARC forces.

In sum, ARC forces play an essential role, enabling commanders to meet mission requirements. However, if disciplinary action is necessary, commanders and judge advocates need to know when ARC personnel are subject to the UCMJ.

Chapter 1

The Air Reserve Components

Today, there is still a belief among commanders that all Air Reserve Component (ARC) forces working within their command or on their base are subject to the Uniform Code of Military Justice. This basic assumption leads commanders to mistakenly believe that they have the authority to punish an ARC member; however, this is simply not true in all cases. ARC personnel fall into different categories, and different rules apply. Generally speaking, the Air Force consists of “the Regular Air Force, the Air National Guard of the United States, the Air National Guard while in the service of the United States, and the Air Force Reserve.”¹ The statutory language seems to count the Air National Guard twice, but this is a misconception. The two reserve components of the Air Force are the Air Force Reserve and the Air National Guard of the United States.²

The Air National Guard consists of “two overlapping but legally distinct organizations:” the Air National Guard while in the service of the United States and the Air National Guard of the United States.³ In 1916, Congress “federalized” the National Guard. Amendments to the original Act created a dual enlistment system, requiring members who joined the state Air National Guard to simultaneously join the Air National Guard of the United States, a reserve component of our national armed forces.⁴

Thus, the Air National Guard while in the service of the United States (ANG) is the state organization and the Air National Guard of the United States (ANGUS) is the federal organization of the reserve component. When ANGUS is ordered into “federal service,” each member is relieved from duty in the Air National Guard from the effective date of the order and is transferred to active duty until he or she is relieved of that duty.⁵

Establishing Proper Jurisdiction Under the Uniform Code of Military Justice

For a commander to have any authority to discipline members of the ARC forces, whether it is to pursue court-martial or nonjudicial punishment (NJP) action, jurisdictional control must be established. To establish jurisdiction for trial by court-martial, commanders must meet a number of prerequisites, including the following two criteria: “The accused must be a person subject to court-martial jurisdiction⁶; and . . . The Offense must be subject to court-martial jurisdiction.”⁷

In general, AFRES personnel are subject to the Uniform Code of Military Justice (UCMJ) for any offense(s) they commit while performing active duty or IDT periods. Members of the ANG are subject to UCMJ jurisdiction only when they are in “federal service” (Title 10 status).⁸

The general principles regarding personal and subject matter jurisdiction are set out in Article 2 of the UCMJ. Article 2 specifically states that persons subject to the code are “other persons lawfully called or ordered into, or to duty in or for training in, the armed forces,⁹ and . . . members of a reserve component while on inactive-duty training, but in the case of members of . . . the Air National Guard of the United States only when in

Federal service.”¹⁰ The language in Air Force Instruction 51-201 merely restates the authority codified in Article 2(a)(3) establishing jurisdiction over ARC personnel.¹¹

Thus, in order for a commander to establish jurisdictional authority over an ARC member who has committed a crime, the facts must establish subject matter and personal jurisdiction over the offense. The key to establishing subject matter and personal jurisdiction is determining the “status” of the ARC member at the time the offense occurred. Whether a court has either subject matter or personal jurisdiction is a question of law.

Subject Matter Jurisdiction

Commanders and judge advocates must rely on the test set out in *Solorio v. United States* to establish subject matter jurisdiction.¹² In *Solorio*, the U.S. Supreme Court held that jurisdiction of a court-martial depends solely on the accused’s “status” as a member of the Armed Forces when the offenses occurred.¹³

Solorio was an active duty member of the U.S. Coast Guard. In his appeal, the defense argued that because Solorio’s crimes occurred while he was living within the civilian community and not on any military installation, there was no “service connection,” therefore, the military lacked jurisdiction to prosecute him. The Court’s holding in *Solorio* specifically overruled the old “service connection” test in favor of looking to the “status” of the accused at the time the offense occurred as the sole determining factor to establish subject matter jurisdiction.¹⁴ As a result of *Solorio*, commanders have the jurisdictional authority to prosecute ARC members, even if the crime is committed in a civilian community. As long as the ARC member committed the

offense while in “duty status” (active, IDT, or federal service), he or she will be subject to the UCMJ and all of the possible disciplinary actions contained within the Code.

Personal Jurisdiction

The law establishing personal jurisdiction is similar to proving subject matter jurisdiction. The courts also look to the accused’s “status” at the time the offense was committed to determine personal jurisdiction. The definitive case in this area is *United States v. Cline*.¹⁵ In *Cline*, the court held that the reservist’s status at the time of the offense, not the duty hours, established personal jurisdiction.¹⁶ Cline was an AFRES member called to active duty for deployment. His orders were effective on 25 April, one minute after midnight, yet he was not required to report to duty until 1600 hours the same day. At approximately 0830, the morning of 25 April, the charged offense occurred.¹⁷

In his appeal, Cline argued that because the offense occurred prior to the time he reported to duty, the court had no personal jurisdiction to try the case. Nevertheless, the Court found that his “AFRES status” started one minute after midnight, thus, Cline committed the crime while in his “AFRES status” so the military court had personal jurisdiction over Cline to try the case.¹⁸

When you review the holdings of *Solorio* and *Cline*, the courts clearly set out the established criteria to determine both subject matter and personal jurisdiction. If an ARC member is in duty status, active, IDT, or federal service at the time the offense is committed, the military has jurisdictional authority to try the case.

Maintaining Court-Martial Jurisdiction Over Air Reserve Components

It is important for commanders and judge advocates to know that, if an ARC member commits a violation of the UCMJ, a break in duty “status” does not sever court-martial jurisdiction. Simply stated, if an ARC member commits a crime, whether an AFRES member performing active duty or IDT or an ANGUS member in Title 10 status, and the crime is not discovered until after the person is released from his duties, the break in “status” does not dissolve the military’s jurisdiction to try the case. Article 3(d) of the UCMJ provides that “A member of a reserve component who is subject to this chapter is not, by virtue of the termination of a period of active duty or inactive-duty training, relieved from amenability to the jurisdiction of this chapter for an offense against this chapter committed during such period of active duty or inactive-duty training.”¹⁹

If necessary, an ARC member can be involuntarily extended or recalled to active duty for disciplinary action. Extending ARC members on active duty is the preferred approach to acquire and maintain court-martial jurisdiction. As shown in Appendix A, it will be necessary to publish special orders prior to the termination of the existing orders to continue the ARC member on active duty.²⁰ The authority is found in AFI 33-328.²¹

Involuntary extensions will only work for reservists on active duty. It is important to note that orders are not necessary for AFRES members to perform IDT days, so they cannot be extended but must be involuntarily recalled to active duty. The code allows ARC members to be involuntarily recalled to active duty for purposes of Article 32 investigations, for trial by court-martial, and for Article 15, nonjudicial punishment procedures.²² The only limitation for recalling an AFRES member to active duty is that

the violation must have been committed while he was either on active duty or performing IDT. An ANG member must have committed the offense while in federal service.²³

When a commander finds it necessary to recall an ARC member, Article 2(d)(4) and (5) of the UCMJ set forth the two officials authorized to recall members to active duty for disciplinary purposes. They are a general courts-martial convening authority (GCMCA) in a regular component of the armed forces and the Secretary of each component of the armed forces. More specifically, the instruction provides detailed guidance for recalling ARC members to active duty.²⁴

It is critical to note that limitations apply to certain punishments depending on who recalls the ARC member to active duty. If a GCMCA recalls an ARC member and the case proceeds to trial without the approval of the Secretary of Defense (SecDef), the member will not be subject to any confinement as a possible punishment. Additionally, an ARC member cannot be required to serve any restrictions on liberty other than when he or she is conducting a routine active duty tour or IDT. If SecDef's approval is requested and granted, then a court-martial sentence can include confinement. Also, if the commander desires, the ARC member can also be required to submit to restrictions on liberty during the recall period.²⁵

If an ARC member is called or retained on active duty for the purposes of court-martial action, the authority to convene the court and prosecute the case resides with the active duty military. It is essential that commanders coordinate all recall actions through the base-level staff judge advocate that will prosecute the case once the court is convened. The proper authorities designated to convene general, special, and summary courts-martial are set out in Articles 22-24.

For judge advocates, it is very critical that an ARC member be on active duty prior to arraignment at a general or special court-martial, otherwise the Air Force jeopardizes its ability to establish personal jurisdiction.²⁶ Once court-martial jurisdiction attaches to an ARC member on active duty, jurisdiction remains until the trial is completed, including the service of any sentence.²⁷ Simply investigating the offense(s) is not enough. Procedurally, actions taken to attach jurisdiction over an ARC member include apprehension, imposition of restraint (restriction, arrest or confinement), or the preferral of charges. Once any of these actions is taken, it creates a legal basis to hold the ARC member until the conclusion of the case, even over the ARC member's objection.²⁸

For a summary court-martial, the military has jurisdiction to conduct the case as long as the ARC member is on active duty or performing IDT at the time of the proceedings. Nevertheless, no AFRES member can be held beyond the limits of his or her normal IDT period for trial or to complete the punishment. Any unexecuted punishment can be served during subsequent normal training periods.²⁹

Article 15, Nonjudicial Punishment under the Uniform Code of Military Justice

Along with courts-martial, the imposition of NJP is also a critical disciplinary tool for commanders. Commanders need to know if they have the authority to take NJP action against ARC members along with possible implications if punishment is imposed. AFI 51-202 implements Article 15, UCMJ, and is the controlling authority.³⁰

The instruction provides that commanders may impose NJP on members of their command. It clarifies the term "members of their command" to include "assigned members of the element or organization commanded and others on temporary duty

(TDY) with, or otherwise attached to, the element or organization.”³¹ Moreover, it provides that “a member need not be attached on TDY orders for the commander to exercise NJP authority if the commander exercises the usual responsibilities of command over the member. In such a case, the commander has concurrent authority with the commander of the member’s element or organization of permanent assignment.”³² However, a commander must coordinate with the appropriate reserve component authorities.³³ Thus, active duty commanders have concurrent jurisdiction along with the parent ARC component to pursue NJP action against an ARC member.

Nevertheless, an AFRES member should not be recalled to active duty for the sole purpose of imposing nonjudicial punishment. A commander should wait to initiate NJP until the AFRES member’s next active duty or IDT period. Commanders can seek a waiver of this restriction through their MAJCOM commanders or equivalents in appropriate cases.³⁴ There are additional stipulations as to when an AFRES member can serve NJP imposed while in IDT status or if the AFRES member is ordered to active duty for disciplinary purposes. Commanders and judge advocates need to consult the instruction and the MCM to ensure they comply with all restrictions.

Host-Tenant Agreements

Commanders and judge advocates need to be aware that host-tenant procedures apply to AFRES members and ANGUS members.³⁵ All members of a tenant unit or Air Force element, including ARC units and personnel, are attached to the host command for court-martial purposes. If court-martial action is necessary, it is preferred that the host command maintain jurisdiction over the case to expeditiously resolve such judicial matters. However, this host command authority does not strip any other commanders of

their ability to exercise such authority over the individual.³⁶ Also, the extent of the host command's jurisdiction over ARC forces depends on the rank of the member.³⁷

Enlisted personnel are assigned to the host command for both judicial and nonjudicial punishment and for administrative actions, including discharge actions.³⁸ On the other hand, officers are assigned to the host command only for court-martial and NJP actions. Tenant commanders retain concurrent authority to take action regarding NJP. All NJP actions for officers and enlisted personnel are administratively handled through the host command's staff judge advocate, regardless of who imposed the punishment or acted on the appeal.³⁹ Tenant commanders also retain primary authority to take administrative actions against officers.⁴⁰

Thus, host-tenant agreements apply to both AFRES members and ANGUS members. When pursuing disciplinary action against an ARC member, judge advocates must remember to review host-tenant agreements to ensure they are providing commanders with accurate advice. It is extremely important because, depending on the rank of the ARC member, a commander may have sole disciplinary authority, may share disciplinary authority with the reserve commander, or may have no authority at all to take certain disciplinary actions.

Notes

¹ 10 U.S.C.A. § 8062(d)(1) (1987).

² 10 U.S.C.A. § 10101(5), (6) (1994).

³ Perpich v. Department of Defense, 496 U.S. 334; 110 S. Ct. 2418; 110 L. Ed. 2nd 312 (1990).

⁴ Ibid.

⁵ 32 U.S.C.A. § 325 (1988).

⁶ MANUAL FOR COURTS-MARTIAL (MCM) United States, (2000 Edition), Rules for Courts-Martial (R.C.M.) 201(b)(4).

⁷ MCM, R.C.M. 201(b)(5).

Notes

⁸ 10 U.S.C.A. § 802(a)(3) (1996); Air Force Instruction (AFI) 51-201, paragraph 2.8.1., *Administration of Military Justice*, 2 November 1999. See also Air Force Manual (AFMAN) 36-8001, paragraph 1.8., *Reserve Personnel Participation and Training Procedures*, 1 January 1996. The UCMJ applies to AFRES members on active duty or performing inactive duty training.

⁹ Article 2(a)(1), UCMJ; 10 U.S.C.A. § 802(a)(1) (1996).

¹⁰ Article 2(a)(3), UCMJ; 10 U.S.C.A. § 802(a)(3) (1996).

¹¹ AFI 51-201, paragraph 2.8.

¹² Solorio v. United States, 483 U.S. 435; 107 S. Ct. 2924; 97 L.Ed.2nd 364 (1987).

¹³ Ibid.

¹⁴ Ibid.

¹⁵ U.S. v. Cline, 26 M.J. 1005 (A.F.C.M.R. 1988), aff'd 29 M.J. 83 (C.M.A. 1989).

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Article 3(d), UCMJ; 10 U.S.C.A. § 803(d) (1996).

²⁰ "Special Order Example." On line. Internet, 11 November 2001. Available from https://aflsa.jag.af.mil/GROUPS/AIR_FORCE/JUSTICE/JAJM/DOCUMENT/RECALL.doc.

²¹ AFI 33-328, paragraph 1.1.2., *Administrative Orders*, 1 February 1999.

²² Article 2(d)(1) UCMJ; 10 U.S.C.A. § 802 (1996). See also AFMAN 36-8001, paragraph 1.8.

²³ Article 2(d)(2) UCMJ; 10 U.S.C.A. § 802 (1996).

²⁴ AFI 52-201, paragraph 2.8.4. The instruction allows the following convening authorities to recall an ARC member to active duty: 1) the GCMCA for the regular component unit to which the member is attached for training purposes; 2) the GCMCA under which the member performed the active duty when the offense occurred; or 3) the GCMCA of the host unit, as designated in the host-tenant support agreement.

²⁵ Article 2(d)(5), UCMJ; 10 U.S.C.A. § 802 (1996); and AFI 52-201, paragraph 2.8.4.

²⁶ MCM, R.C.M 204(b)(1).

²⁷ MCM, R.C.M 202(c)(1).

²⁸ MCM, R.C.M 202(c)(2).

²⁹ MCM, R.C.M 204(b)(2).

³⁰ AFI 51-202, *Nonjudicial Punishment*, 1 October 1996.

³¹ AFI 51-202, paragraph 2.1.1.

³² Ibid.

³³ AFI 51-202, paragraph 4.2. See also AFI 25-201, paragraph 6.4.5., *Support Agreement Procedures*, 1 December 1996.

³⁴ AFI 51-201, paragraph 2.8.3.

³⁵ AFI 25-201, paragraph 6.1.

³⁶ AFI 25-201, paragraph 6.2.

³⁷ Ibid.

³⁸ Ibid.

Notes

³⁹ AFI 25-201, paragraph 6.4.

⁴⁰ AFI 25-201, paragraph 6.3.

Chapter 2

Air Force Reserve

As discussed earlier, the United States Air Force Reserve is one of the Air Reserve Components that make up our aerospace capability in the Armed Forces.¹ There are two basic programs in the Air Force Reserve: Category A and B programs. It is important to have a basic understanding of the difference between Category A and B programs, but for our purposes, it is critical to know when commanders have the authority to take disciplinary action against an AFRES member.

The Category A program is a unit program. It requires a reserve unit to perform one weekend of training every month, referred to as a unit training assembly (UTA). The Category A program also requires a reserve unit to complete two weeks of annual active duty training (ADT) each year.²

The Category B program is an Individual Mobilization Augmentee (IMA) program. The IMA program consists of individual reservists who are assigned to major commands, field operating agencies, joint organizations, direct reporting units, and outside agencies. IMAs usually perform inactive duty training (IDT) periods one or two times a week, but IMAs can perform IDT periods in increments longer than two days. Additionally, IMAs are required to perform a 12- to 14-day active duty training tour each year.³

Article 2, UCMJ, gives commanders the authority to take disciplinary action against any member of the Air Force Reserve performing active duty training or inactive duty training.⁴ Yet, as pointed out in the discussion of *Solorio* and *Cline*, the commander must look to the “status” of the reservist at the time of the offense(s) to determine whether there is jurisdictional authority in order to take disciplinary action. If there is no proof the AFRES member committed the alleged offense(s) while on active duty or within their IDT period, the commander has no jurisdiction over the case.

Active Duty and Inactive Duty Tours

It is easier to establish jurisdiction when AFRES members are performing an active duty tour because they are placed on orders specifying the inclusive dates of the tour. An AF Form 938, Request and Authorization for Active Duty Training/Active Duty Tour, comprises the order authorizing a member to perform active duty training (see attachment). Specifically, block 14 states the hour and date the reserve member is to report to active duty, and block 15 gives the date the member is released from active duty. In *Cline*, the court determined that active duty status begins at 0001 hours on the date the reserve member is to report to active duty and is, therefore, a person subject to the Code. The ruling of the court also held that an order to active duty is self-executing and automatically takes effect one second after midnight.⁵ To have a valid order, it must be properly published, authenticated, and received by the member. An order is valid if it complies with the requirements of AFI 33-328. According to the AFI, an order is authenticated and becomes valid when the signature or the official stamp of the orders approval official or designated representative is placed on the order.⁶

On the other hand, it is far more difficult for commanders to establish jurisdiction when Category A Reservists are performing UTAs and Category B Reservists (IMAs) are performing IDTs because there are no orders specifying the time or dates when these AFRES members will fulfill their requirements. Additionally, there is no defined time when duty status begins and ends for training purposes other than the official time the AFRES member reports for duty to begin their UTA and IDT periods. The training periods are completed in four-hour blocks. Thus, duty status begins when the AFRES member reports for duty and ends when he or she officially signs out at the end of the day. However, the AFRES member's lunch break is not considered as part of the training period; therefore, the lunch break does not count as duty status.⁷

If an AFRES member commits a crime within the training periods, the military will be able to establish jurisdiction. However, any crime an AFRES member commits outside the UTA or IDT duty period is beyond the jurisdiction of the military. However, this is not to say creative arguments cannot be made attempting to establish jurisdiction and create new law, and judge advocates should investigate all options.

Telecommuting has raised another issue for commanders regarding jurisdiction.⁸ Under limited circumstances, AFRES members are authorized to perform duties away from their official duty location. This allows AFRES members to perform in active duty or IDT status. However, the instruction has set more definite time standards to establish jurisdiction in telecommuting cases. The instruction specifically states that military jurisdiction over the AFRES member will coincide with the duty hours specified in applicable active duty orders or, in the case of IDT, the inactive duty hours reflected on the AF Form 40a, Record of Individual Inactive Duty Training (see attachment).⁹

The bottom line is, when Category A and B reservists are performing their UTAs or IDTs, the status of the member and the duty hours will be critical in establishing jurisdiction if the AFRES member commits a crime during the same time frame.

However, sometimes the facts are not always clear regarding jurisdiction. When jurisdiction is unclear, commanders need the assistance of judge advocates to research case law to support potential disciplinary actions against a member of the reserve forces. The reserve component doesn't matter. The courts will look to the ARC member's status to determine whether or not the military has jurisdiction to try the case.

As the two cases cited in Appendix B and C indicate, the ARC member's duty "status" and when the offense occurred will play a critical role when it comes to establishing jurisdiction, regardless of whether the person is an AFRES or ANGUS member. In cases contesting jurisdiction, case law can be used to support the commander's authority and provide a sound argument to establish jurisdiction.

As can be seen, to establish jurisdiction, it is crucial for commanders to show the ARC member was on active duty or performing IDT at the time the offense(s) occurred. The same is true when ARC forces are activated or mobilized. The ARC member's active duty status is key in order for a commander to have the authority to take disciplinary action. However, OPCON, ADCON, and specified ADCON become very important in determining which commanders have disciplinary authority over an AFRES member.

Activation and Mobilization of Air Force Reserve

There are a number of methods used to bring AFRES units or members onto active duty, thereby coming within the jurisdiction of the UCMJ. AFRES units or members can

be activated by Presidential Reserve Call-Up¹⁰, 15-Day Call-Up¹¹, or by volunteering.¹² They can also be mobilized through full¹³ or partial mobilization.¹⁴ Depending upon how AFRES units or members are activated or mobilized, they are subject to different degrees of operational control (OPCON) and administrative control (ADCON).

Air Force doctrine associates disciplinary authority with ADCON; however, commanders must remember that ADCON does not confer UCMJ authority.¹⁵ A commander's UCMJ authority or disciplinary authority is a function of command that is established under federal law and the Manual for Courts-Martial, 2000 Edition (MCM). Nevertheless, ADCON helps identify those commanders who **may** have jurisdiction to exercise disciplinary action as a matter of Air Force doctrine and policy. Thus, from a commander's perspective, OPCON and ADCON become very important in determining which commander has disciplinary authority over an AFRES member.

The chain of command for the Armed Forces, including AFRES members, begins with the President and SecDef and flows through two distinct branches: operational and services (administrative).¹⁶ Generally, in the operational branch, command authority flows from the President and SecDef to the combatant commanders (CINCs), then down to their subordinate commanders in joint organizations and service components. In the service or administrative branch, command authority flows from the President and SecDef through the Service Secretaries to MAJCOM commanders, then down to the commanders of subordinate organizations. OPCON and ADCON are specific types of command authority, along with combatant command (COCOM), tactical control (TACON), and support.¹⁷

All AFRES members are assigned to combatant commands as indicated in the “Forces for Unified Commands” memorandum and become available for operational missions if properly activated or mobilized. If activated or mobilized, combatant commanders exercise COCOM and OPCON over AFRES members.¹⁸

OPCON can be delegated or transferred and is exercised by commanders at or below the level of combatant command. It provides commanders with the authority to organize commands and forces and employ those forces as necessary to accomplish assigned missions. Commanders exercise OPCON over all assigned and attached forces. Yet, OPCON does not include authoritative direction for administrative purposes, including discipline.¹⁹

On the other hand, ADCON is the authority necessary for the Military Departments to fulfill their statutory responsibilities for organizing, training, equipping, and sustaining forces to support combatant commands.²⁰ ADCON is defined as the direction or exercise of authority over subordinate organizations for administrative and support purposes, including discipline.²¹ Commanders exercise ADCON over assigned forces but not over attached forces. ADCON for attached forces remains with the commander in the parent unit to which they are assigned.²²

The rules regarding OPCON and ADCON apply to AFRES members and to all situations, no matter where the duty is performed or the reason for active duty service, short of full mobilization. If fully mobilized, AFRES members become active duty members of the regular Air Force, subject to the jurisdiction of the UCMJ, and any disciplinary action flows through the normal chain of command.²³

In all military operations, a Commander, Air Force Forces (COMAFFOR) is normally designated as the primary USAF commander.²⁴ Typically, the Joint Force Commander (JFC) delegates OPCON over all assigned and attached forces to the COMAFFOR. The COMAFFOR has the responsibility for the morale, safety, and security of all assigned Air Force forces and exercises ADCON over all assigned units and personnel to fulfill his responsibilities. The COMAFFOR also acquires the responsibility of “specified ADCON” over all attached units and personnel. Specified ADCON also includes the exercise of disciplinary authority and applies to AFRES units and personnel (IMAs).²⁵

However, in all cases short of full mobilization, primary ADCON for the AFRES forces remains with the Air Force Reserve Command or Air Reserve Personnel Center, and the COMAFFOR exercises specified ADCON over the attached Reserve forces.²⁶ Since doctrine allows more than one commander to exercise disciplinary action over the same personnel, UCMJ authority is shared between commanders holding ADCON and specified ADCON. In situations where disciplinary action is necessary against an AFRES member, the matter is normally coordinated between the two commanders.²⁷ Thus, when necessary, the Reserve commander and the COMAFFOR would coordinate with each other when disciplinary action is taken against an AFRES member.

Additionally, the COMAFFOR has the authority in these situations to place a senior reserve officer on G-series orders, appointing him or her commander of an attached reserve force, and delegate specified ADCON to the Reserve Officer. If a senior reserve officer is not placed on G-series orders, there is no command authority.²⁸ The exception

would be if the reserve unit commander deployed with the unit, he or she would retain ADCON over the unit and thus retain the ability to take disciplinary action.²⁹

Thus, no matter how an AFRES member is activated or mobilized, as a part of the ARC forces, they automatically become subject to the UCMJ. ADCON or specified ADCON does not confer UCMJ authority. A commander's UCMJ authority is a function of command. As a matter of doctrine and policy, ADCON and specified ADCON simply help to identify those commanders who may exercise UCMJ authority in a given situation. For the most part, the rules regarding ANG are similar to those of AFRES when its members are called into federal service.

Notes

¹ 10 U.S.C.A. § 10101(6) (1994).

² "Guard and Reserve Personal Fact Sheets." 1-38. On line. Internet, 11 November 2001. Available from <http://arpc.afrc.af.mil/pa/2001%20factsheets.pdf>.

³ Ibid.

⁴ Article 2(a)(3), UCMJ; 10 U.S.C.A. § 802 (1996). *See also* AFMAN 36-8001, paragraph 1.8.

⁵ *U.S. v. Cline*, 26 M.J. 1005 (A.F.C.M.R. 1988), *aff'd* 29 M.J. 83 (C.M.A. 1989).

⁶ AFI 33-328, *Communications and Information*, 1 February 1999.

⁷ AFMAN 36-8001, Chapter 4.

⁸ AFI 36-8002, paragraph 7, *Telecommuting Guidelines for Air Force Reservists and Their Supervisors*, 1 July 1998.

⁹ AFI 36-8002, paragraph 7.1.

¹⁰ 10 U.S.C.A. § 12304 (1994).

¹¹ 10 U.S.C.A. § 12301(b) (1994).

¹² 10 U.S.C.A. § 12301(d) (1994).

¹³ 10 U.S.C.A. § 12301(a) (1994).

¹⁴ 10 U.S.C.A. § 12302(a) (1994).

¹⁵ Air Force Doctrine Document (AFDD) 2, *Organization and Employment of Aerospace Power*, 17 February 2000, 132.

¹⁶ Lt Gen John P. Abizaid, Director, Joint Staff, Joint Chiefs of Staff. Memorandum. To Joint Staff Directors, Joint Chiefs of Staff. Subject: Use of the Term "National Command Authority," 11 January 2002. The SecDef directed that the use of the term "National Command Authority" be discontinued. Instead, he stated that President, SecDef, or both, should be used if applicable.

¹⁷ Joint Publication 0-2, *Unified Action Armed Forces* (UNAAF), 10 July 2001, I-6, I-8.

Notes

¹⁸ JP 0-2, III-12.

¹⁹ JP 0-2, III-7, III-8.

²⁰ JP 0-2, I-9.

²¹ JP 0-2, III-11.

²² JP 0-2, I-9.

²³ AFDD 2, 123. *See also* AFI 10-402, paragraph 4.1.6., *Mobilization Planning*, 1 January 1997.

²⁴ *Ibid*, 33.

²⁵ *Ibid*, 51-53.

²⁶ Air Force Doctrine Document (AFDD) 1, *Air Focer Basic Doctrine*, September 1997, 65, AFI 10-402, paragraph 4.1.7.

²⁷ *Ibid*, 65.

²⁸ AFI 51-604, paragraph 2.6.9., *Appointment to and Assumption of Command*, 1 October 2000.

²⁹ AFDD 1, 66.

Chapter 3

The Air National Guard

The Air National Guard of the United States is the other Air Reserve Component that makes up our aerospace capability in the Armed Forces.¹ As indicated earlier, the language in the U.S. code seems to count the Air National Guard twice.² However, it is important for commanders to remember that the ANG consists of two overlapping yet legally distinct organizations, the ANG and ANGUS.

The ANG is the state organization, and ANGUS is the federal organization or the reserve component of the Air Force. Both organizations have unit structure similar to that of Category A Reserves, but the membership of both organizations is identical, with only one organization in operation at a given time. An exception to this statement would be when an individual ANG member “volunteers” for federal service. Volunteerism permits the mobilization of an individual guard member.³

The Air National Guard While in the Service of the United States

The ANG is not a reserve component of the Air Force. It is an organized “State Militia” that is governed by the rules of individual states as provided for in the Constitution of the United States.⁴ Known as the “Militia Clause,” Article I, Section 8, Clause 16 provides that “Congress shall have the Power . . . To provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be

employed in the Service of the United States, reserving to the States respectively, the Appointment of Officers, and the Authority of training the Militia according to the discipline as prescribed by Congress.”⁵ The language in the Militia Clause makes it very clear, if the ANG is conducting training as the ANG while in the service of the United States or what is called “Title 32 status,” active duty Air Force commanders have no authority to take disciplinary action. The ANG unit’s state chain of command maintains exclusive jurisdictional control. Thus, when ANG units are performing unit training assembly (UTA) weekends or their two-week annual training, the individual states and their chain of command maintain exclusive authority to punish ANG members.⁶

However, the Militia Clause allows Congress to call the State’s Militia into “federal service” under three limited circumstances: to enforce federal law, suppress insurrection, and repel invasions.⁷ When the State’s Militia is “employed in the Service of the United States” (federal service), under these limited circumstances, case law indicates that federalized militia are subject to military discipline. Thus, in these limited circumstances, active duty commanders may have the jurisdictional authority to punish members of the ANG.⁸

The Air National Guard of the United States

The ANGUS is the other Air Reserve Component of the Air Force and, when it is ordered into “federal service,” each member is relieved from duty in the ANG from the effective date of the order to active duty until he or she is relieved of that duty.⁹ ANGUS is comprised of federally recognized units and individual members.¹⁰ ANGUS does not have a program similar to the IMA program in the Air Force Reserve. The statutory language and implementing directives indicate that ANGUS is primarily to be used as a

unit-structured organization. Even though ANGUS is a unit-structured organization, individual members or fractions of units can be activated or mobilized to fulfill specific requirements.¹¹

When ANG units and members enter federal status, ANGUS units are gained through a Numbered Air Force. However, for administrative control and support purposes, when ANGUS units and members are activated or mobilized under circumstances short of full mobilization, they are initially assigned to the Air National Guard Readiness Center (ANGRC).

The ANGRG is a Title 10 Air Force organization that is a Field Operating Agency of Headquarters USAF. Through its authority, ANGRG executes policy for the ANG and ANGUS, including the exercise of elements of command and control over ANGUS units and members. The ANGRG commander is appointed on G-series orders and acquires administrative control (ADCON) as a result of the activation process.¹²

When called into federal service through activation or mobilization, ANGUS units are assigned directly to the ANGRG or to a detachment of the ANGRG created specifically for the purpose of providing a command structure for deploying ANGUS members.¹³ The ANGRG/CC will exercise ADCON over the newly assigned forces, and he will make these forces available to the gaining NAF for deployment.

Activation and Mobilization of ANGUS

There are a number of methods and various reasons why ANG units or members may be called to federal service. The method or reason used to federalize ANG units or members will dictate who exercises the appropriate command authority necessary to take disciplinary action. As with the Air Force Reserve, ANGUS units or members can enter

active duty through Presidential Reserve Call-Up¹⁴, 15-Day Call-Up¹⁵, by volunteering¹⁶ or through full¹⁷ or partial mobilization.¹⁸ When activated or mobilized, the law regarding UCMJ authority of active duty commanders over ANGUS members is virtually the same. The rules regarding operational control (OPCON) and administrative control (ADCON) are also very similar.

Remember, ADCON and specified ADCON do not confer UCMJ authority. They simply establish which commanders are authorized to exercise disciplinary action against an ANGUS member. When ANGUS members enter Title 10 status, they become subject to the UCMJ pursuant to Article 2. Any active duty commander within an ANGUS member's chain of command has the right to take disciplinary action because UCMJ authority is a function of command under federal law and the MCM.

The only real difference regarding OPCON and ADCON between the two reserve forces is who specifically exercises ADCON or specified ADCON over an ANGUS unit or member. When ANG members are called into federal service, they transfer organizations, moving from their state militia status into their Title 10 status as members of ANGUS.¹⁹ ANGUS members are assigned to the ANGRC.

Under the authority and direction of the ANGRC, ANG units issue orders transferring ANG members to Title 10 status. The orders include language specifying that ANGUS members are now assigned to the ANGRC directly or to a detachment created by ANGRC. With the exception of full mobilization, the ANGRC Commander (ANGRC/CC) acquires ADCON over all newly assigned ANGUS members. If ANG members enter Title 10 status through full mobilization, ANGUS members are assigned directly to the gaining MAJCOM, not to the ANGRC.²⁰ When ANGUS detachments or

members deploy in situations less than full mobilization, the gaining MAJCOM will often create a specially designated aerospace expeditionary unit, attaching the ANGUS detachment or members to it.²¹

Just like the AFRES forces, when ANGUS members deploy (CONUS or OCONUS), they or the detachment to which they are assigned must be attached for OPCON purposes to a designated commander. Usually, the designated host commander is the COMAFFOR. Active duty commanders must look to the ANGUS member's orders to identify the host command and the ANGUS unit's or member's chain of command.²² Under AFDD-2 guidance, along with OPCON, the COMAFFOR also acquires specified ADCON over ANGUS detachments or members by the fact that they are now attached to his or her command.²³

Remember, ADCON and specified ADCON confer the ability to discipline members assigned or attached. ADCON applies to assigned forces and specified ADCON applies to attached forces.²⁴ In all situations short of full mobilization, all ANGUS members are assigned to ANGRC when they are transferred to Title 10 status. Therefore, ADCON resides with the ANGRC/CC and is exercised through a detachment commander if one is appointed.²⁵ Specified ADCON will usually reside with the COMAFFOR as set forth in AFDD-2 guidance. ADCON and specified ADCON identify which commander's exercise UCMJ authority as a matter of Air Force doctrine or policy. Policy and doctrine also recognizes that more than one commander can exercise UCMJ authority over an ANGUS member in any given situation. In this case, ANGRC and the COMAFFOR will have concurrent jurisdiction to take disciplinary action.²⁶ Thus, close coordination

between the two is necessary to determine who will take disciplinary action. AFI 51-201 confirms this point.

It is also very important to note that commanders do not lose their disciplinary authority over ARC members when they are assigned to a joint environment. The UCMJ authority remains; however, the authority to discipline members is also given to specific commanders of the other services.

Notes

¹ 10 U.S.C.A. § 10101(5) (1994).

² 10 U.S.C.A. § 8062(d)(1) (1987).

³ 10 U.S.C.A. § 12301(d) (1994).

⁴ The United States Constitution, Article I, Section 8.

⁵ Article I, Section 8, Clause 16.

⁶ 10 U.S.C.A. § 10113 (1994).

⁷ Article I, Section 8, Clause 15; 10 U.S.C.A. Section 12406 (1996).

⁸ Martin v. Mott, 25 U.S. 19, 12 Wheat. 19, 6 L. Ed. 537 (1827).

⁹ 32 U.S.C.A. § 325 (1988).

¹⁰ 10 U.S.C.A. § 10111 (1994).

¹¹ 10 U.S.C.A. § 10103. *See also* Air Force Policy Directive (AFPD) 10-3, paragraph 7, *Air Reserve Component Forces*, 2 May 1994.

¹² *Ibid*, 2, 3.

¹³ “Air National Guard Commander’s Legal Deskbook, Chapter 15, International Operations Law, Section 15-15,” *OPCON and ADCON for Deploying Air National Guard Forces*. 1-38. On line. Internet. January 2001. Available from https://aflsa.jag.af.mil/GROUPS/NATIONAL_GUARD/ANG/SOURCE/ang_deskbook/Chap15.pdf.

¹⁴ 10 U.S.C.A. § 12304 (1994).

¹⁵ 10 U.S.C.A. § 10 12301(b) (1994).

¹⁶ 10 U.S.C.A. § 10 12301(d) (1994).

¹⁷ 10 U.S.C.A. § 10 12301(a) (1994).

¹⁸ 10 U.S.C.A. § 10 12302(a) (1994).

¹⁹ Perpich, 496 U.S.334 (1990).

²⁰ AFDD 1, 66, Air Force Handbook (AFH) 10-416, paragraph 6.8.2., *Personnel Readiness and Mobilization*, 22 December 1994.

²¹ “Air National Guard Commander’s Legal Deskbook, Chapter 15, International Operations Law, Section 15-15,” *OPCON and ADCON for Deploying Air National Guard Forces*. 1-38. On line. Internet. January 2001. Available from https://aflsa.jag.af.mil/GROUPS/NATIONAL_GUARD/ANG/SOURCE/ang_deskbook/Chap15.pdf. In most deployed scenarios, if an ANGUS deployment involves 10 or more members for 15 days or longer, ANGRC creates a detachment, assigning members to a

Notes

detachment. The ANGRC/CC appoints a detachment commander using an AF Form 35 or G-series orders. The ANGRC/CC will exercise his ADCON responsibilities through the detachment commander. If the deployment consists of less than 10 members and the deployment will last less than 15 days, or does not include an officer, the ANGUS members are attached to the 201 Mission Support Squadron (201 MSS). The 201 MSS is a Title 10 subordinate unit of ANGRC. Whether an ANGUS member is assigned to ANGRC or attached to the 201 MSS, the rules regarding OPCON and ADCON apply the same in both instances.

²² Ibid, 5.

²³ AFDD 2, 52.

²⁴ Ibid.

²⁵ "Air National Guard Commander's Legal Deskbook, Chapter 15, International Operations Law, Section 15-15," *OPCON and ADCON for Deploying Air National Guard Forces*. 1-38. On line. Internet. January 2001. Available from https://aflsa.jag.af.mil/GROUPS/NATIONAL_GUARD/ANG/SOURCE/ang_deskbook/Chap15.pdf.

²⁶ AFDD 1, 66.

Chapter 4

Jurisdiction Over ARC Forces in Joint Commands

Joint commands create their own set of issues for commanders when it comes to establishing jurisdiction over AFRES and ANGUS personnel. If the ARC forces have been properly activated or mobilized and are serving in a joint environment, they fall under the jurisdiction of active duty commanders. The UCMJ authority remains the same, only the commander who is authorized to exercise disciplinary action changes.

In joint commands, the Joint Force Commander (JFC) is the person responsible for discipline and the administration of military personnel assigned to the organization, but he can delegate this authority.¹

Like all other commanders, the JFC exercises disciplinary authority as a function of command under federal law, the MCM, and the implementation of Service directives. When the JFC is the combatant commander, he is authorized to establish procedures by which a senior officer of a Service assigned to the headquarters of a joint organization is given the authority to exercise administrative and NJP authority over same Service personnel assigned to the joint organization. Since Service component commanders are responsible for internal administration and discipline of their Service personnel, the JFC normally exercises administrative or disciplinary authority through the Service component commanders. For the Air Force, this will usually be the COMAFFOR. All

ARC forces will be subject to UCMJ action; however, not all commanders have the authority to take judicial or NJP action.²

Pursuant to Article 22(a), UCMJ and RCM 201(3)(2)(a), combatant commanders are given court-martial jurisdiction over members of the Armed Forces, including reserve force personnel, and are authorized to convene general courts-martial. Subordinate JFCs are given special courts-martial convening authority pursuant to Article 23(a)(6). If JFCs are specifically granted authority, they are authorized to convene a court-martial to try an accused from another military service.³

If an incident involves more than one Service or occurs outside a military reservation but within the jurisdiction of the JFC, disciplinary action can be taken by the JFC or the Service component commander (usually COMAFFOR) unless the JFC withholds this authority. On the other hand, if an incident occurs within the jurisdictional control of a single Service, disciplinary action is usually handled by the Service component commander (usually COMAFFOR).⁴

For example, in PACOM, the combatant commander is a Navy admiral. If a conflict erupts in his area of responsibility (AOR), and a subunified command or joint task force is created to handle the conflict, the Navy combatant commander can select a member of any service to be the JFC. If an ARC member commits a crime in a city within the JFC's AOR, unless authority is expressly withheld, the JFC, regardless of his or her service, is authorized to take disciplinary action. However, if the crime is committed at a staging base controlled by the Air Force, jurisdictional control regarding disciplinary action is usually handled within the Service component. In the latter situation, it would typically be the COMAFFOR.

Regarding NJP, the procedures for offering NJP to an ARC member are basically the same as previously discussed, with a few minor exceptions. In a joint environment, the JFC is responsible for discipline within the command and normally exercises his or her disciplinary authority through the Air Force component commander or the senior Air Force officer (SAFO). Unless it is withheld, joint and unified commanders are authorized to impose NJP on Air Force members, including reserve forces, regardless of the commander's parent service, but they need to follow the procedures set forth in AFI 51-202.⁵

When given authority, the COMAFFOR or the SAFO can impose NJP for an offense involving more than one Service or that occurs outside a military reservation but within the jurisdictional control of a joint or unified commander. The COMAFFOR or SAFO will usually handle NJP actions if only one Service is involved and the incident occurs on a military reservation or within the military jurisdiction of the Air Force.⁶

If NJP appears warranted but the joint commander decides to take no action, the SAFO or the Air Force element commander is authorized to take NJP action. However, if the joint commander takes NJP action, the SAFO or element commander has the responsibility to notify the servicing Air Force staff judge advocate to ensure the joint commander understands the procedures regulating the administration and processing of an NJP action against a reserve force member.⁷

Notes

¹ JP 0-2, V-20.

² Ibid.

³ Ibid.

⁴ JP 0-2, V-21.

Notes

- ⁵ Ibid.
⁶ Ibid.
⁷ Ibid.

Chapter 5

Conclusion

There is no doubt that in today's high tempo environment, the Air Force Reserve and the Air National Guard of the United States play an integral role helping the Air Force meet its mission requirements. As the reserve forces are integrated into the force structure as illustrated in Appendix D, commanders and judge advocates must have a clear understanding of a commander's authority to discipline members of the ARC and the complexities associated with taking such action.

Initially, commanders and judge advocates need to remember the distinction between ANG and ANGUS. The ANG is a state militia and is never a reserve component of the Air Force. While in Title 32 status, a commander has no UCMJ authority to take any disciplinary action, even if the ANG is conducting UTA weekends or doing their two-week training on an Air Force installation. For commanders, proper jurisdiction over ARC forces is necessary in two critical disciplinary processes: trial by court-martial and NJP actions.

As to trial by court-martial, Article 2 of the UCMJ provides commanders with the foundational guidance regarding their authority to take disciplinary action against any member of the ARC force. In order for a commander to have the authority necessary to take any disciplinary action, an AFRES member must be on active duty or performing

inactive duty training, and an ANGUS member must be in federal service (Title 10 status). To obtain proper jurisdiction in a trial by court-martial, the evidence must show the ARC member committed the alleged offense(s) while a person subject to the UCMJ. The courts will look to the ARC member's "status" at the time of the offense. The holdings in *Solorio* and *Cline* clearly state that the status of the ARC member is key to establishing subject matter and personal jurisdiction. If the commander cannot meet this initial burden to prove jurisdiction, then the ARC member is not subject to the UCMJ, and a commander does not have the authority necessary to take disciplinary action.

Regarding NJP action, commanders have concurrent jurisdiction along with the member's reserve component to take disciplinary action against any ARC member assigned or attached to their commands. However, commanders must coordinate all NJP actions with the appropriate reserve command authorities.

There is some confusion created when reserve force members are activated or mobilized and ordered to active duty. Air Force doctrine associates discipline with the ADCON function. It is important for commanders and judge advocates to remember that federal law, the MCM, and implementing directives establish a commander's authority to take disciplinary action. The references to ADCON and specified ADCON in Air Force doctrine and policy do not grant commanders the authority to take disciplinary action; they simply help to identify those commanders who have the proper authority to take such action. As illustrated in Appendix E, in all cases short of full mobilization, both reserve components retain ADCON over their respective members, and the Air Force component command through doctrine (usually COMAFFOR) is given specified ADCON. Thus, the reserve command to which the member is assigned and the

COMAFFOR have concurrent authority to take disciplinary action against a member of the reserve forces. In these cases, any disciplinary action must be coordinated between the two commanders. However, when full mobilization occurs, the gaining MAJCOM acquires ADCON over the reserve forces.

In a joint force environment, the JFC has the ultimate authority to take disciplinary action whether he is the combatant commander, subunified commander, or a joint task force commander. If the JFC is the combatant commander, he is authorized to convene courts and impose NJP. Typically, he delegates his NJP authority to a SAFO or the COMAFFOR in the case of the Air Force. Depending on the circumstances, commanders from different services can convene courts or take disciplinary action against members of the reserve components. However, in most cases, these actions will be handled through Air Force command channels.

In conclusion, the purpose of this paper is not to answer all jurisdictional questions. It is meant to be a roadmap to guide commanders and judge advocates through some of the jurisdiction issues faced when determining whether a commander has the authority to take disciplinary action against an ARC member. Because ARC forces play an integral role in today's Air Force, it is my recommendation to make this article a **must read** for all commanders and judge advocates. To be effective, it is essential that both commanders and judge advocates understand the criteria that subject an ARC member to the UCMJ because disciplinary problems impact mission readiness! If a commander doesn't understand the basis of his or her jurisdictional authority to punish ARC forces or mishandles the process, it has the potential to severely impact unit morale and readiness.

Appendix A

Sample Recall Order

**DEPARTMENT OF THE AIR FORCE
HEADQUARTERS (Name of Wing) (MAJCOM)
123 ADDRESS, SUITE 200
ANYWHERE AIR FORCE BASE, STATE, ZIP CODE**

SPECIAL ORDER

30 June 2000

AB-11 (Order #)

By direction of the General Court-Martial Convening Authority, Commander ____ Air Force, Anywhere Air Force Base, (State), the Air Force orders MAJOR JOHN DOE, 000-00-0000 (SSN), United States Air Force Reserve, [Reserve unit of attachment] to involuntary extended active duty effective [Day-Month-Year], under the following authorities: 10 U.S.C. 802, AFI 51-201, and AFI 33-328, for the purpose of disciplinary action. The duration of this active duty is indefinite. The unit commander must take action to release the member from active duty upon termination of disciplinary proceedings, including the service of any confinement or restriction adjudged. Unit of attachment is [Name of Unit], Anywhere Air Force Base, [State]. Member's home of record is [City, State]. Member must report to the [specific reporting instructions such as squadron orderly room, specific address, AFB] on [Day-Month-Year] at [time of day].

Expenses chargeable to: Pay/Allowance: (GCM Fund Cite)

Authority:

JOE B. COMMANDER, Colonel, USAF
Commander

Distribution:

1 - HQ AFPC/CC
1 - HQ ARPC/CC
1 - GCM/CC
1 - SPCM/CC
1 - Individual

Appendix B

UNITED STATES V. MORSE

Colonel Samuel A. Morse served as a member of the Air Force Reserve. The charges alleged that Colonel Morse stole money by filing false travel vouchers while performing active duty and inactive duty training as the commander of the 442nd Medical Squadron at Whiteman AFB, Missouri, and the 932 Medical Group at Scott AFB, Illinois. He was found guilty of attempted larceny and filing false travel vouchers. His approved sentence included a dismissal and confinement for one year. In his appeal, Colonel Morse contended in one of his arguments that the court-martial lacked subject matter jurisdiction regarding 17 specifications because he signed the AF Form 938 or DD Forms 1351-2 (travel vouchers) after he was released from his active duty or inactive duty training. The facts of the case clearly showed that Colonel Morse committed the offenses while in his “status” as a member of the Air Force Reserve. Through stipulated testimony and witness testimony, the court learned that Colonel Morse completed his AF Form 938s and travel vouchers before he departed duty as an AFRES member. Even if this evidence was ignored, the court concluded the military still had subject matter jurisdiction to try the case. As a reserve officer, the court stated that Colonel Morse had a duty as part of his active duty or inactive duty training tours to truthfully complete the forms, and his duties as a reserve member were not complete until the forms were signed. If Colonel Morse actually signed the forms after completing his travel, he did so in duty status; therefore, Colonel Morse was a person subject to the UCMJ.

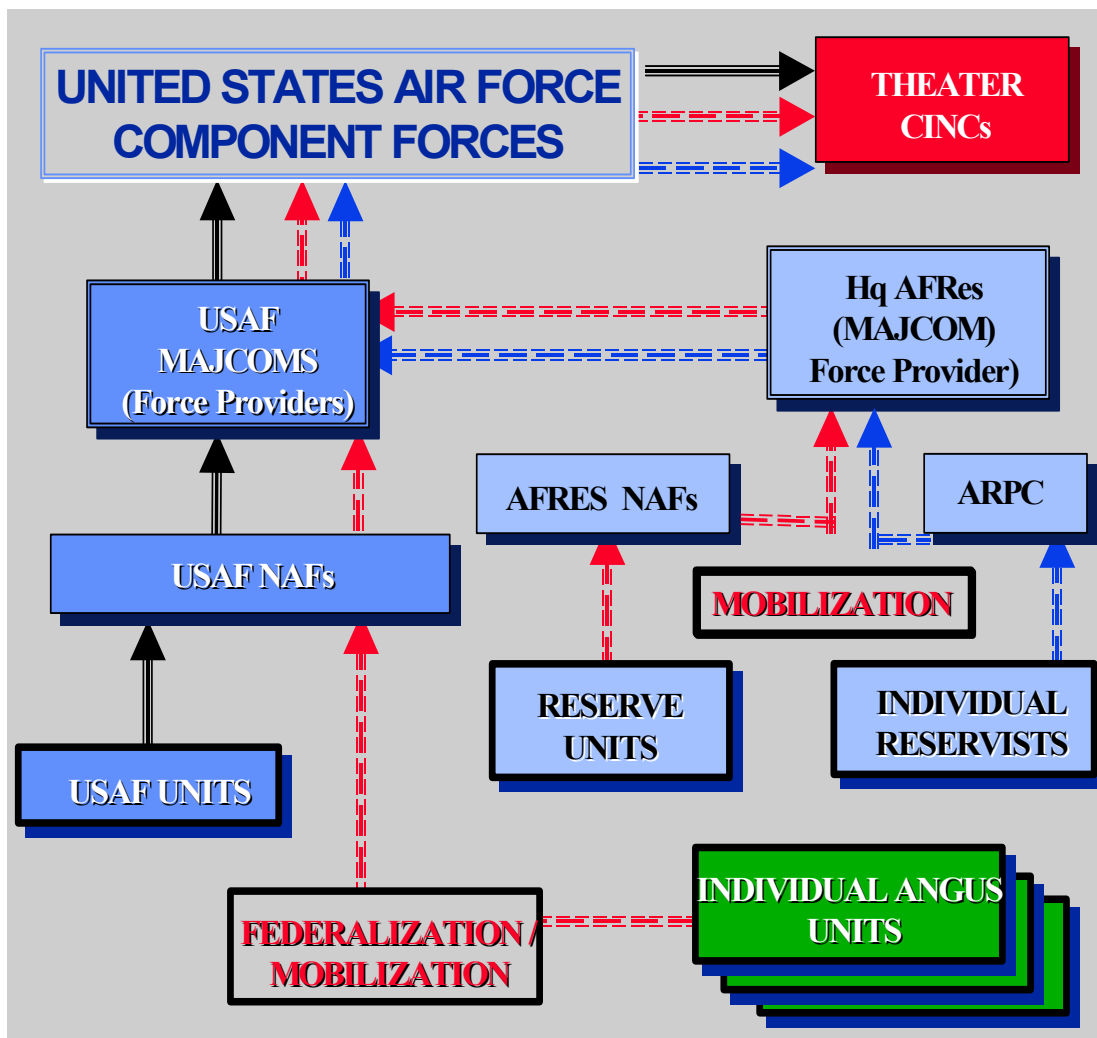
Appendix C

United States v Wilson

Airman Basic (AB) Shonnon D. Wilson enlisted in the Air National Guard on 14 April 1995. He received orders to active duty (federal service) to attend basic military training and technical school. While on active duty, AB Wilson stole \$320 from a fellow airman and left without proper authority on 19 October 1995. San Antonio civil authorities apprehended AB Wilson on 30 November 1996. AB Wilson was eventually tried, plead guilty to the charges of larceny and desertion, and ultimately received a sentence that included a dishonorable discharge and seven months confinement. He appealed his conviction, arguing that the court lacked personal jurisdiction to try the case. AB Wilson argued that since the state issued a DD Form 214 discharging him from the Air National Guard, the military courts had no jurisdiction to try his case. The facts presented showed that AB Wilson committed the offenses of larceny and desertion while he was in federal status. His orders to active duty had not terminated. By law, his unauthorized absence suspended the termination date of his active duty order. Thus, AB Wilson remained in federal status during his entire absence. While AB Wilson remained absent, his ANG unit commander took steps to extend AB Wilson's active duty commitment an additional 60 days. When the San Antonio authorities apprehended AB Wilson and the military started the court-martial process, he remained in federal status. The court found the state had processed paperwork discharging AB Wilson without having the proper authority, thus, the DD Form 214 and accompanying paperwork were invalid. Even though the court-martial process extended past AB Wilson's federal service obligation, the military authorities had already taken a number of steps with a view towards court-martial action. When steps are taken with a view towards a court-martial, a member of the reserves can be legally held past their federal service obligation for purposes of trial. Thus, the court-martial had the proper jurisdiction to try the case.

Appendix D

Wire Diagram for Air Reserve Components



From a power point briefing given by Colonel James Thompson, Office of the Chief Counsel, National Guard Bureau (NGB-JA).

Appendix E

ADCON and ARC Deployments

COMAFFOR or other designated Air Force Commander

Full Mobilization	ADCON
Less Than Full Mobilization	Specified ADCON (ADCON Shared)

Air Reserve Component (AFRES or ANGUS)

Full Mobilization	No ADCON
Less Than Full Mobilization	ADCON Shared

Glossary

ADCON	Administrative Control
AFDD-2	Air Force Doctrine Document 2
AFRES	Air Force Reserve
ANG	Air National Guard while in the Service of the United States
ANGRC	Air National Guard Readiness Center
ANGUS	Air National Guard of the United States
ARC	Air Reserve Component
COMAFFOR	Commander, Air Force Forces
GCMCA	General Courts-Martial Convening Authority
IDT	Inactive Duty Training
IMA	Individual Mobilization Augmentee
JFC	Joint Force Commander
MCM	Manual for Courts-Martial, United States, 2000 Edition
NJP	Nonjudicial Punishment
OPCON	Operational Control
SAFO	Senior Air Force Officer
TACON	Tactical Control
UTA	Unit Training Assembly
UCMJ	Uniform Code of Military Justice

Definition

Joint Force Commander. The term Joint Force Commander is a general term that applies to a combatant commander, a subunified commander or a joint task force commander who is authorized to exercise combatant command (COCOM) or OPCON over a joint force.

Bibliography

- Abizaid, Lt Gen John P., Director, Joint Staff, Joint Chiefs of Staff. Memorandum. To Joint Staff Directors, Joint Chiefs of Staff. Subject: Use of the Term “National Command Authority,” 11 January 2002.
- Air Force Doctrine Document (AFDD) 1, *Air Force Basic Doctrine*, September 1997.
- Air Force Doctrine Document (AFDD) 2, *Organization and Employment of Aerospace Power*, 17 February 2000.
- Air Force Instruction 10-402, *Mobilization Planning*, 1 January 1997.
- Air Force Instruction 25-201, *Support Agreements Procedures*, 1 December 1996.
- Air Force Instruction 33-328, *Communications and Information*, 1 February 1999.
- Air Force Instruction 36-8002, *Telecommuting Guidelines for Air Force Reservists and Their Supervisors*, 1 July 1998.
- Air Force Instruction 51-201, *Administration of Military Justice*, 2 November 1999.
- Air Force Instruction 51-202, *Nonjudicial Punishment*, 1 October 1996.
- Air Force Instruction 51-604, *Appointment to and Assumption of Command*, 1 October 2000.
- Air Force Handbook 10-416, *Personnel Readiness and Mobilization*, 22 December 1994.
- Air Force Manual 36-8001, *Reserve Personnel Participation and Training Procedures*, 1 January 2000.
- Air Force Policy Directive 10-3, *Air Reserve Component Forces*, 2 May 1994.
- “Air National Guard Commander’s Legal Deskbook, Chapter 15, International Operations Law, Section 15-15,” *OPCON and ADCON for Deploying Air National Guard Forces*. 1-38. On line. Internet. January 2001. Available from https://aflsa.jag.af.mil/GROUPS/NATIONAL_GUARD/ANG/SOURCE/ang_deskbook/Chap15.pdf.
- “Guard and Reserve Personal Fact Sheets.” 1-38. On line. Internet, 11 November 2001. Available from <http://arpc.afrc.af.mil/pa/2001%20factsheets.pdf>.
- Joint Publication 0-2, *Unified Action Armed Forces (UNAAF)*, 10 July 2001.
- Manual for Courts-Martial (MCM), United States (2000 Edition).
- Military Justice Reporter, Volume 29, Opinions of the United States Court of Military Appeals and Selected Opinions of the Courts of Military Review, St. Paul, Minn., West Publishing Co., 1990.
- “Special Order Example.” On line. Internet. 11 November 2001. Available from https://aflsa.jag.af.mil/GROUPS/AIR_FORCE/JUSTICE/IAJM/DOCUMENT/REC_ALL.doc.
- Supreme Court Reporter, Volume 107B, October term, St Paul Minn., West Publishing Co., 1990.
- Supreme Court Reporter, Volume 110B, October term, St Paul Minn., West Publishing Co., 1990.

The United States Constitution, Article I, § 8.
Title 10 United States Code Annotated, § 801 - §858(b), West Group, 1998.
Title 10 United States Code Annotated, § 6481 - §10000, West Group, 1998.
Title 10 United States Code Annotated, § 10000 - End, West Group, 1998.
Title 32 United States Code Annotated, National Guard, St. Paul Minn., West Publishing Co. and Brooklyn New York, Edward Thompson Company, 1959 (1998 Cumulative Annual Pocket Part).
Martin v. Mott, 25 U.S. 19, 12 Wheat. 19, 6 L. Ed. 537 (1827).